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Right to Counsel: People v. Rivera

on a breaking and entering charge, signed written admissions after being interrogated on suspicion of murder.[1957] The United States Supreme Court refused to suppress these statements since no formal murder charges had been initiated against the defendant.[1958] If the *Moran* Court could not find that formal proceedings had begun, then applying federal law to the instant case, defendant in *Caviano* could not sustain a claim that formal proceedings had been initiated where he was only questioned on the alleged violation. Therefore, defendant's statements were clearly not protected under either the Federal or State Constitutions.

CRIMINAL DIVISION

BRONX COUNTY

People v. Rivera[1959]
(decided November 22, 1993)

Defendant, Ernesto Rivera, in a "hybrid form of representation"[1960] attempted to proceed *pro se* and have his criminal indictment dismissed, based on New York's speedy trial provision.[1961] The court had to determine under what

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1957. *Id.* at 417.

1958. *Id.* at 430-31.

1959. ___ Misc. 2d ___, 605 N.Y.S.2d 822 (Sup. Ct. Bronx County 1993).

1960. *Id.* at ___, 605 N.Y.S.2d at 822. Hybrid representation occurs where a defendant proceeds *pro se* and also receives standby counsel. *Id.* at ___, 605 N.Y.S.2d at 823.

1961. *Id.* at ___, 605 N.Y.S.2d at 822; *see also* N.Y. CRIM. PROC. LAW § 30.30 (McKinney 1992). This section states in part:

> 1. Except as otherwise provided in subdivision three, a motion made pursuant to paragraph (e) of subdivision one of section 170.30 or paragraph (g) of subdivision one of section 210.20 must be granted where the people are not ready for trial within:
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> (a) six months of the commencement of a criminal action wherein a defendant is accused of one or more offenses, at least one of which is a felony;

circumstances a criminal defendant had a constitutional right to make a *pro se* motion, notwithstanding the fact that he was represented by competent counsel.[1962]

On appeal, the New York Supreme Court upheld the trial court's refusal to entertain Mr. Rivera's *pro se* motion. The court based its decision on the satisfactory inquiry made by the court to his trial counsel, and on the needless burden placed upon the criminal justice system by the defendant's "frivolous pro se motions."[1963] The court also served notice that attorneys who support such "frivolous *pro se* motions" in the future might well be sanctioned.[1964]

In reaching its decision, the New York Supreme Court applied the criteria set forth in *People v. Renaud.*[1965] *Renaud* demands that in situations in which a represented defendant seeks to make a *pro se* motion, the trial court must inquire whether counsel has knowledge of the motion, has belief in the motion's merit, or has

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(b) ninety days of the commencement of a criminal action wherein a defendant is accused of one or more offenses, at least one of which is a misdemeanor punishable by a sentence of imprisonment of more than three months and none of which is a felony;

(c) sixty days of the commencement of a criminal action wherein the defendant is accused of one or more offenses, at least one of which is a misdemeanor punishable by a sentence of imprisonment of not more than three months and none of which is a crime punishable by a sentence of imprisonment of more than three months;

(d) thirty days of the commencement of a criminal action wherein the defendant is accused of one or more offenses, at least one of which is a violation and none of which is a crime.

Id.

1962. *Rivera*, ___ Misc. 2d at ___, 605 N.Y.S.2d at 823-25.

1963. *Id.* at ___, 605 N.Y.S.2d at 825.

1964. *Id.* at ___, 605 N.Y.S.2d at 825.

1965. 145 A.D.2d 367, 535 N.Y.S.2d 985 (1st Dep't 1988). The appellate division vacated and reversed defendant's conviction based on the trial court's failure to rule on his *pro se* motion to dismiss, or to even inquire into whether defendant's attorney was aware of such motion. *Id.* at 367-68, 535 N.Y.S.2d at 988.

any conflict with the criminal defendant.[1966] In *Rivera*, the court found that although aware of Mr. Rivera's *pro se* motion to dismiss the indictment, trial counsel neither agreed with nor adopted that motion.[1967] Indeed, by conferring with the defendant, as well as her supervisor about the speedy trial motion, "counsel complied with both her fiduciary duty to her client and her ethical obligation as an officer of the court to refrain from frivolous arguments."[1968] In analyzing the third *Renaud* inquiry concerning any conflict between the defendant and his trial counsel, the supreme court noted that not only did Rivera fail to allege any conflict, but there existed no reasonable basis for a conflict claim.[1969] Thus, the test set forth in *Renaud* was satisfied at Mr. Rivera's trial.

This case, therefore, remains true to the *Renaud* decision that frivolous *pro se* motions can be constitutionally denied, once a proper inquiry is made regarding trial counsel. In this manner, care is taken to strike a delicate balance between trial counsel's obligations to both the client and the legal system.[1970]

On the federal level, in *Faretta v. California*,[1971] the Supreme Court held that a defendant can waive the right to counsel if it is done "knowingly and intelligently."[1972] Once such a waiver is made, the Sixth Amendment[1973] prevents a state from imposing counsel upon that defendant.[1974] Furthermore, the Supreme Court held that it is not a constitutional violation for a trial court to appoint "standby counsel[,]"[1975] even when that standby counsel engages in unsolicited courtroom participation.[1976]

1966. *Id.* at ___, 535 N.Y.S.2d at 987.

1967. *Rivera*, ___ Misc. 2d at ___, 605 N.Y.S.2d at 825.

1968. *Id.* at ___, 605 N.Y.S.2d at 825.

1969. *Id.* at ___, 605 N.Y.S.2d at 825.

1970. *Id.* at ___, 605 N.Y.S.2d at 824-25.

1971. 422 U.S. 806 (1975).

1972. *Id.* at 835 (quoting Johnson v. Zerbst, 304 U.S. 458, 464-65 (1938)).

1973. U.S. CONST. amend. VI. The Sixth Amendment provides in pertinent part: "In all criminal prosecutions, the accused shall enjoy the right . . . to have Assistance of Counsel for his defense." *Id.*

1974. *Faretta*, 422 U.S. at 836.

1975. *Id.* at 834 n.46. "Of course, a State may - even over objection by the accused - appoint a 'standby counsel' to aid the accused if and when the

Moreover, the United States Supreme Court, in *Anders v. California*,[1977] noted that the duty of counsel "requires that he support his client[] . . . to the best of his ability."[1978] However, the Supreme Court also stated that "[f]or judges to second guess reasonable professional judgments and impose on appointed counsel a duty to raise every 'colorable' claim suggested by a client would disserve the very goal of vigorous and effective advocacy that underlies *Anders*."[1979]

In comparing the state and federal standards, it appears that waiver of counsel is easier under a federal standard than the state standard. New York state will first make a determination as to whether the decision to appear *pro se* is frivolous or not before allowing a waiver of the constitutional right to be represented by counsel.

CRIMINAL TERM

KINGS COUNTY

People v. Richardson[1980]
(decided September 20, 1993)

The criminal defendant, an indigent, requested the court to appoint counsel, on a motion to vacate a judgment.[1981] The court

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accused requests help, and to be available to represent the accused in the event that termination of the defendant's self-representation is necessary." *Id.* at 835 n.46 (quoting United States v. Dougherty, 473 F.2d 1113, 1124-26 (D.C. Cir. 1972)).

1976. *See* McKaskle v. Wiggins, 465 U.S. 168, 187 n.17 (1984).

1977. 386 U.S. 738 (1967).

1978. *Id.* at 744.

1979. Jones v. Barnes, 463 U.S. 745, 754 (1983).

1980. 159 Misc. 2d 167, 603 N.Y.S.2d 700 (Sup. Ct. Kings County 1993).

1981. *Id.* at 167, 603 N.Y.S.2d at 701; *see also* N.Y. CRIM. PROC. LAW § 440.10 (McKinney 1993). The statute provides in relevant part:

> 1. At any time after the entry of a judgment, the court in which it was entered may, upon motion of the defendant, vacate such judgment upon the ground that:
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> (a) The court did not have jurisdiction of the action or of the person of the defendant; or